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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/013,819 01/27/98 OUDERKIRK

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EXAMINER

SHAFFER, R

ART UNIT

PAPER NUMBER

2872

DATE MAILED:

10/27/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No. <u>09/013819</u>	Applicant(s) <u>OUNDERKERK ET AL</u>	
Examiner <u>R.D. SMAYER</u>	Group Art Unit <u>2872</u>	

→The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address→

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 months MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 7/26/99
- ☒ This action is FINAL.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-9, 13, 14 AND 44-47 is/are pending in the application.
- Of the above claim(s) 13 AND 44-47 is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-9 AND 14 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) _____.
- ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 8
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

Office Action Summary

Art Unit: 2872

1. Newly submitted claims 13 and 44-47 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: newly submitted claims 13 and 44-47 are not readable on the elected invention because the newly submitted claims fail to include the details of a difference in refracting indices between the first and second polymeric materials ~~for~~ the absorbing polarizer being aligned to substantially absorb light of the first polarization state and to substantially transmit light of the second polarization state. The elected and newly submitted inventions are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately useable. In the instant case, the newly submitted invention has separate utility such as an optical polarizer without the details of a difference in refractive indices between first and second polymeric materials or the absorbing polarizer being aligned to substantially absorb light of the first polarization state and to substantially transmit light of the second polarization state as stated above which would require a search in class 359, subclass 500 which would not be required for the elected invention.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 13 and 44-47 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 2872

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-9 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schrenk et al('949).

Schrenk et al discloses a birefringent interference polarizer comprising a multilayer stack including first and second polymeric materials, wherein at least one of the first and second materials being birefringent, such that a refracting index difference between the first and second polymeric materials reflects light having a first polarization while transmitting light having a second polarization, see column 3, lines 17-37, which obviously serves as a reflective polarizer. Furthermore, Schrenk et al clearly discloses in column 3, lines 38-55, that it may be desirable to incorporate coloring agents, such as dyes into one or more of the individual layers of said birefringent polarizer in order to permit selective absorption of certain wavelengths so as to control the bandwidth of reflected polarized light and the wavelength range of transmitted light which obviously serves as an absorbing polarizer. Moreover, Schrenk et al clearly discloses in column 4, lines 13-27, that the polymeric materials are coextruded.

As to the limitations that the absorbing polarizer is aligned to "substantially absorb light" of the first polarization state and to "substantially transmit light" of the second polarization state". It would have been obvious and/or within the level of one of ordinary skill in the art at the time the invention was made to adjusted and/or tailor the degree of absorptance in order to

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meet user's specifications, as stated in column 3, lines 58-62 of Schrenk et al. Since, it has been held that discovering the optimum or workable ranges involves only routine skill in the art. Note In re Aller 105 U.S.P.Q. 233; In re Boesch, 617 F.2d 272, 205 U.S.P.Q. 215 (CCPA 1980) and In re Reese, 129 U.S.P.Q. 402.

3. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

4. Any inquiry concerning this communication should be directed to R. D. Shafer at telephone number (703) 308-4813.

Shafer/ds *ROS*

10/15/99

Ricky D. Shafer
RICKY D. SHAFER
PATENT EXAMINER
ART UNIT 2872